

EXHIBIT C

FINANCIAL OVERSIGHT & MANAGEMENT BOARD FOR PUERTO RICO



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BY ELECTRONIC MAIL

January 6, 2022

The Honorable Pedro R. Pierluisi Urrutia
Governor of Puerto Rico

Dear Governor Pierluisi Urrutia:

The Oversight Board is in receipt of the Proposed Fiscal Plan submitted by the Puerto Rico Highways and Transportation Authority (“HTA”) on December 16, 2021 (the “Proposed Plan”), as further supplemented on December 17, 2021. The Oversight Board appreciates the efforts of the Governor, the Executive Director and his staff and advisors to finalize the Proposed Plan in accordance with the guidance shared by the Oversight Board on November 18th. The Oversight Board is encouraged by HTA’s determination to improve road conditions in Puerto Rico and reach the national performance targets set forth by the Federal Highway Administration (“FHWA”). We also recognize HTA’s continued improvement of the capital program in FY21, where despite the pandemic, HTA delivered 88.5%¹ of the planned capital project disbursements. However, after careful review of the Proposed Plan, the Oversight Board has determined certain revisions and additional supporting information are needed before it can be certified in compliance with the requirements of PROMESA².

This letter outlines the actions HTA must take to revise its Proposed Plan such that HTA is transformed into a sustainable and efficient toll road authority that effectively executes capital projects. The Proposed Plan is inconsistent with the fundamental objectives of PROMESA to achieve fiscal responsibility and regain access to capital markets. Currently, the Proposed Plan forecasts a total deficit of \$1.2B for FY22 through FY51 and includes expenditures without a confirmed source of funds. For the Proposed Plan to be viable, HTA must revised it to only include those expenses for which HTA has identified the specific sources of funding to be used. The Proposed Plan should also account for the necessary fiscal measures impact that will enable HTA to become fiscally sustainable and improve the transportation infrastructure in Puerto Rico.

Certification of HTA’s Fiscal Plan, would require at least the following adjustments:

¹ As reported on June 30, 2021, end-of-year Budget-to-Actuals (“B2A”) report, considers the Federal, Non-Federal, Emergency Repair and Local Construction program.

² This letter serves as the notice of violation pursuant to Section 201(c)(3)(B).

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1. Update baseline projections to exclude the impact of any fiscal measures and to show clear assumptions [consistent with those adopted in the HTA May 2021 Certified Fiscal Plan (“HTA 2021 CFP”), or with full explanation in cases of difference].
2. Insert performance technical adjustments outlined below to ensure consistency with the Commonwealth Fiscal Plan assumptions.
3. Adjust the Capital Improvement Program and the overall level of capital expenditures to better reflect historical capacity to disburse, HTA’s funding availability, and the principles outlined in the HTA 2021 CFP (e.g., prioritize state of good repair investments, maximize federal funding, and plan for expenditures only if confirmed revenue source exists).
4. Adjust fiscal measures to align the overall impact with the HTA 2021 CFP, or, for any deviations, highlight why the proposed changes result in better alignment with the overall mission and objectives for HTA and the Fiscal Plan.
5. Provide a revised plan for Transportation Sector Reform³ (TSR) based on the analysis of all the options previously laid out, while taking in consideration FOMB’s comments to all proposals that will be provided in parallel to this Notice of Violation (“NoV”) in a separate letter, and that has the support and alignment from all the government entities involved. If the toll subsidiary approach included in the Proposed Plan is elected, additional information must be provided on how HTA plans to achieve the legislation required for the creation of the subsidiary to make this option viable.

I. Updates to the projections of the baseline⁴

The Proposed Plan must reflect the following amendments to its baseline forecasts:

Clarify assumptions used to develop the toll fare and transit revenue baseline:

HTA’s financial model and the Proposed Plan should address the following items within the toll fare and transit revenue baseline:

FY22 actuals positive variance: The Proposed Plan and underlying financial model must clarify how the revised projections reflect HTA’s toll roads’ outperformance in FY22 relative to the HTA 2021 CFP projections. The “Steer” methodology included within HTA’s submitted financial model does not enable a comprehensive understanding of how FY21 data was properly adjusted to account for the revenue outperformance observed during the first four months of FY22.

Detailed assumptions used to create baseline toll fare forecast: The underlying financial model uses three calculation methods for baseline toll fares with underlying projections hard coded and no details on the assumptions leading to the hard coding. HTA must explain in detail the forecasting methodology, calculations, and underlying assumptions considered in the forecast for baseline toll fare

³ These reforms were outlined in a Section 205(a) letter of January 29, 2021, and further detailed in Chapter 11 of the 2021 Commonwealth Certified Fiscal Plan.

⁴ Sections 201 (b)(1)(A),(B),(C),(D),(G),(H),(J).

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revenue, including the reasons why the methodology creates a more accurate forecast to predict toll volume and fare performance.

Tren Urbano (“TU”) and Metrobus fare revenue: HTA must provide documentation for the underlying assumptions considered in the methodology to forecast TU and Metrobus revenue from FY22 through FY51. HTA must detail the rationale explaining how and why the updated projections for TU and Metrobus revenue provide a more precise forecast than the assumptions considered in the HTA 2021 CFP. The Oversight Board acknowledges that the baseline projections included in the HTA 2021 CFP projected a quicker recovery than the observed trend YTD in FY22. However, HTA must explain in detail its methodology for calculating a) how long it believes ridership will remain depressed from March 2020 (pre-COVID) levels; b) what level ridership will be as a percentage of pre-COVID ridership after this period passes; and c) the growth rate for ridership from this new “next normal” level through FY51.

Correct the forecast for electronic toll fine (“ETF”) revenue: HTA’s Proposed Plan and underlying financial model should consider year-to-date actuals for toll transactions to forecast ETF revenue from FY22 and onward. Currently, the submitted financial model considers actuals for transactions until February 2021 for the forecast of ETF revenue from FY22 through FY51.

Exclude fiscal measures impact from baseline: Baseline forecasts are intended to represent HTA’s financial trajectory if it maintains the “status quo” and does not implement any fiscal measures. The impact of these measures listed below must instead be presented separately as a fiscal measure which layers on top of the financial baseline to set aside and separately track the impact of such measures.

Toll fare revenues fiscal measures: The forecast used to develop the toll fare revenue baseline includes the impact of anticipated toll fare increases within the projections made to develop such baseline. HTA should exclude from the baseline the fiscal measure impact. In addition, HTA must present the impact of fiscal measures on toll fare revenues by breaking out components for baseline (i.e., assumed growth in volume and revenue with no change in price) and fare increase (i.e., incremental impact of proposed fare price changes which in turn may reduce volume).

Bus Rapid Transit (BRT) fiscal measure: The forecast used to develop the Metrobus fare revenue baseline includes the impact of the fiscal measure related to the Bus Rapid Transit (“BRT”) lines within the Metrobus fares baseline. HTA should exclude the fiscal measure from the Metrobus fare revenue baseline and should instead present separately the impact of the fiscal measure.

Federal funding baseline (FHWA and FTA): HTA should update the federal funding assumptions to more accurately reflect the level of federal funding available to Puerto Rico and HTA, given the recent passage of the Bipartisan Infrastructure Legislation. HTA must provide detailed documentation demonstrating how the increase formula funding for highways and transit from the Bipartisan Infrastructure Legislation is reflected within HTA’s financial projections. This documentation should describe

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how the method used to develop the annual assumptions and recent increases in formula funding have been incorporated within the HTA's projections.

II. Make technical adjustments to the Proposed Plan and underlying financial model

The Proposed Plan must be updated to ensure projections are consistent and aligned with the Revised Commonwealth Fiscal Plan assumptions.

Revise macroeconomic projections: The Proposed Plan must use the updated version of the Commonwealth's macroeconomic projections as included in the current Commonwealth January 2022 Revised Fiscal Plan. These assumptions will be provided by the Oversight Board to HTA for incorporation in the HTA January 2022 Fiscal Plan.

Update Commonwealth transfer amounts: The Oversight Board will provide HTA the updated amounts reflecting the Commonwealth appropriations to be made to HTA for incorporation in the Proposed Plan, as currently outlined in the Commonwealth January 2022 Revised Fiscal Plan.

Incorporate expenditures related to the Commonwealth Plan of Adjustment ('POA') – In accordance with the Commonwealth January 2022 Revised Fiscal Plan, the Confirmation Order, and the HTA/Convention Center District Authority (CCDA) Plan Support Agreement, HTA must make cash payments in the aggregate amount of \$314 million as follows: (a) \$299M to be divided among (i) holders of HTA 68 Bond Claims, (ii) holders of HTA 98 Senior Bond Claims, and certain HTA/CCDA Plan Support Agreement Joinder Creditors, and (b) \$15M to the DRA Parties in accordance with the Debt Recovery Authority (DRA) Stipulation.. HTA should account for the \$314 million transfer as a loan from the Commonwealth in the Proposed Plan. The transaction should be structured as a conventional loan with a term not to exceed the period covered by the Certified Fiscal Plan (30 years) and subordinated to HTA bonds. Loan repayment should begin no later than FY23. This loan will be used to ensure liquidity in connection with the cash obligations of HTA upon confirmation of the Commonwealth POA.

III. Updates to the projections of capital expenditures related to HTA's Capital Improvement Program⁵

The Proposed Plan shall be revised to ensure capital expenditures reflect HTA's historical disbursement capacity, along the principles outlined in the HTA 2021 CFP.

Structural capital deficits: The Proposed Plan must indicate the specific sources of funding to be used for each capital program, and these sources of funding must be within the envelope provided by Commonwealth or federal appropriations and should

⁵ Sections 201 (b)(1)(B),(D),(F),(G),(J).

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include confirmed and secured funding. The Proposed Plan must have no structural capital deficits.

Additional detail on rationale for level of investment for SOGR: The Proposed Plan must further detail how HTA determined the level of hard cost and soft cost investment required each year to reach and sustain highway SOGR over the course of the Fiscal Plan period (until FY2051). The HTA 2021 CFP suggests that the capital spending level has been set such that the system will reach and sustain SOGR. The Proposed Plan must explain the rationale the levels of spending required, including deviations from amounts in the HTA 2021 CFP. The Proposed Plan cites third-party analysis of the required level of spending to reach SOGR, which must be provided to the FOMB to fully substantiate the estimates in the Proposed Plan.

Capex adjustments to better reflect capacity to deliver: HTA must adjust capex plans to reflect more accurately the capacity to disburse capital funds. For example, from FY18-21, HTA has disbursed a maximum of \$322m on core highway, (excluding transit and federal emergency programs), yet the Proposed Plan includes an annual average of \$380m⁶ in core highway spending from FY24-30.

Removal of planned capex without a confirmed funding source: In line with the NoV from April 2021, the Proposed Plan must exclude planned capital expenditures for which there is no confirmed funding source. While the FOMB maintains its support for maximizing federal funds for the benefit of investing in the system, Fiscal Plans and budget expenditures cannot be set without certainty that revenue sources exist. In particular, the ~\$1.6B in CDBG discretionary capital expenditures should either be supported with a confirmed funding source or removed from the Fiscal Plan.

Abriendo Caminos (AC) IV program funds: The Proposed Plan must exclude the assumption for \$26.5M of AC IV capital revenues in FY22. Pursuant to a letter from the Secretary of the Department of Transportation and Public Works (“DTOP”, for its Spanish acronym) dated November 22, 2021, the AC IV program has been transferred to DTOP. Thus, HTA will not receive any inflows (nor will it carry out capital projects) associated with AC phase IV and onward.

Bridge formula funding and related expenditures: The Proposed Plan asserts “the CapEx disbursement model also considered the recently enacted Bipartisan Infrastructure Legislation, which allocates from FY22 thru FY26. . . \$225M for the bridge program.” HTA must clearly identify in its Fiscal Model how these planned sources will be maximized and aligned with eligible uses - including separating the line item(s) associated with the planned \$45M inflows and matching with corresponding expenses/projects.

Feeder bus project for Tren Urbano: The submission mentions that an adequate feeder bus system is necessary for a high-performing transit network, but that “this investment is not included in the fiscal plan since achieving the 25% discussed recovery ratio can only be attained with significant investments in a bus feeder system

⁶ In FY22 dollars, adjusted for inflation.

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that will exceed the additional revenues.” The FOMB commends HTA on its ambitions to expand the feeder bus system and recommends that HTA strive to secure discretionary funding sources for this project (e.g., programs from the recently passed Bipartisan Infrastructure Legislation, such as the Low or No Emission Vehicle Program, the RAISE grant program, Congestion Relief program). Furthermore, the FOMB wishes to reiterate that HTA should aim to achieve the goals outlined in the HTA 2021 CFP via capital investments and transit management improvements with existing assets and secured revenue sources.

Labor and materials availability: The Proposed Plan includes historic levels of investment that will likely contribute to island-wide strain on capacity of the construction industry (i.e., in conjunction with other expansion of capital expenditures from the federal American Rescue Plan funding programs, disbursements from the Federal Emergency Management Agency and the recently passed Bipartisan Infrastructure Legislation). The Proposed Plan must provide a supporting analysis by HTA on the capacity of the construction sector and HTA’s plan to manage and mitigate risks associated with capacity constraints on the sector that may lead to under performance in ability to deliver capital projects, and/or impact the level of investment if macroeconomics shocks such as materials or labor price inflation unfolds.

IV. Updates to the projections of the proposed fiscal measures⁷

The Proposed Plan must address the following shortfalls in fiscal impact of the measures listed below:

Toll fare increases: The projections made to develop the fiscal measure impact related to a toll fine increase should be updated as outlined in the HTA 2021 CFP. In addition, the text included within the Proposed Plan and the submitted Fiscal Plan model differ in the start date of the toll fare increase⁸. HTA should provide a reason for this discrepancy and/or correct the error to ensure consistency.

Toll fine increases: HTA must adjust the approach to a tiered fine schedule in line with the HTA 2021 CFP. Additionally, the Proposed Plan and underlying financial model must increase toll fines in line with inflation, as outlined in the HTA 2021 CFP.

New HTA board of directors. The Proposed Plan must include the implementation of the fiscal measure “Recruiting a New Board of Directors” in line with HTA 2021 CFP and provide an updated timeline based off the most recent implementation timeline provided to the Oversight Board as part of HTA's December 2021 B2A reporting.

⁷ Sections 201 (b),(1),(A),(B),(C),(D),(F),(G),(H),(J).

⁸ The Proposed Plan assumes toll fare increase as of March 1, 2022, while the underlying financial model assumes a start date of February 21, 2022.

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Specifically, the Oversight Board notes that HTA has recently postponed the timeline for sharing a draft of the law from December 31, 2021 to March 31, 2022.

Ancillary revenues/ P3 deadlines: HTA should provide a schedule of specific deadlines to track progress of the implementation steps for the ancillary revenues and P3 measures. For those deadlines that require the input of P3A, HTA should discuss with P3A to agree on the implementation schedule to include in the Proposed Plan.

Transit measures implementation timeline: The Proposed Plan must include a revised schedule for all specific deadlines included in the HTA 2021 CFP related to the implementation of the following measures: (1) Leverage private-sector services for improved efficiency and (2) Transit Service Integration and Coordination.

Projected fiscal impact of transit measures: As outlined in the fiscal measures associated with the HTA 2021 CFP, HTA and its partners (e.g., PRITA) must enhance system performance with a focus on existing assets, rather than requiring new investments. The Oversight Board notes that the projected additional revenue to be generated from the transit enhancement measures within HTA's financial model is limited to the point-of-sales systems repair. The Proposed Plan should additionally estimate incremental revenues to be generated from other transit enhancement measures, such as the integration of TU with other transit networks (e.g., schedules, network coverage, fares and payment technology), and the promotion of transit-oriented development (TOD) around TU stations, as this incremental revenue will enable HTA to make incremental progress towards reaching the target farebox recovery ratio. HTA should provide a perspective on the feasibility and revenue impact of each measure. HTA should further explain how it will go from its present farebox recovery ratio of ~5%, to the ratio of ~15% that it regularly achieved pre-Maria (with the same asset base, without fiscal measures), and quantify how much the fiscal measures can achieve incremental progress beyond that ratio of ~15% towards the level of performance observed in peer systems (e.g, up to ~25%+).

Reassessing Tren Urbano contracts: The Proposed Plan must provide more detailed explanation and documentation in the fiscal plan model and fiscal plan submission for the deviation in projected savings from the HTA 2021 CFP. Specifically, it must document how much of the deviation is from factors HTA has stated as not under its control (e.g., electricity prices, required insurance), and how much of that deviation is in scope for potential renegotiation.

Engaging new healthcare provider: The Proposed Plan must be aligned with the savings target established in the HTA 2021 CFP such that a new procurement process is conducted to reach an average employer contribution of \$125 per employee per month for those who do not have preexisting conditions and \$450 for all others. This approach must be reflected in the health reform cost assumptions of the fiscal plan model for years FY23 onward with adjustments for inflation in future years.

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V. Transportation Sector Reform (TSR) Proposed Approach

The reform of the transportation sector is essential for enhancing the conditions, performance, congestion, and safety of the road system in Puerto Rico. While HTA plays a critical role in shaping the state of the transportation network, the reforms laid out by the FOMB in its letter dated January 29, 2021, are intended to address the root challenges of underperformance in Puerto Rico and the implementation of such reforms require coordination and alignment across the various transportation entities on the Island (DTOP, PRITA, AMA and P3).

Maintain the plan for the Transportation Sector Reform (TSR) as outlined in the

HTA 2021 CFP: The FOMB appreciates HTA's continued engagement on the topic of the TSR. However, there are separate, ongoing discussions with multiple Government agencies regarding potential approaches to the TSR without a unified perspective, including AAFAF's presentation to the FOMB on December 12, 2021. FOMB will submit a formal response to provide feedback to this December 12, 2021 presentation in a separate official response to be provided simultaneously with this NoV. This response will provide greater detail to recognize the positive components in previous proposals, as well as risks and challenges that should be considered. While the Proposed Plan includes HTA's proposed approach, to create a toll subsidiary within its organization, the Proposed Plan should be revised to take into account the FOMB's forthcoming feedback. If HTA elects to maintain the subsidiary approach, the Proposed Plan should be revised to include additional information on how HTA plans to achieve the creation of the proposed toll subsidiary and how HTA will make this option viable to be implemented with the agreement of all Government parties involved. In this case, the FOMB requests a draft of the required legislation and evidence of the necessary alignment across all the Government agencies involved (DTOP, AAFAF, PRITA, etc.) to proceed with this proposal. In absence of this information, FOMB requests that HTA revert Part VII in its Proposed Plan to the original language contained in Chapter 17 of the HTA 2021 CFP. The FOMB looks forward to engaging with HTA and welcomes a productive dialogue in the coming weeks.

The Oversight Board recognizes the initiatives laid out above will require time, effort and the full commitment of HTA's leadership. However, the Oversight Board believes they will enable HTA to achieve fiscal sustainability and to improve the delivery of its investment in capital infrastructure, thus bolstering economic activity in Puerto Rico.

According to the schedule established by the Oversight Board, pursuant to Section 201(d)(1), the Governor must submit its revised Proposed Fiscal Plan, which proposal shall incorporate and address each of this letter's items, along with all necessary supporting materials, no later than January 21, 2022.

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We look forward to working with you for the benefit of the people of Puerto Rico.

Sincerely,


Natalie A. Jaresko

CC: Hon. Omar Marrero Díaz
Dr. Edwin González Montalvo
HTA Governing Board